

NO. 47491-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

BRIAN NICHOLAS WEST,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

The Honorable F. Mark McCauley, Judge

**SUPPLEMENTAL BRIEF OF APPELLANT
(re appellate costs)**

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A. SUPPLEMENTAL ASSIGNMENT OF ERROR

If the state substantially prevails on appeal, any request for appellate costs should be denied.

B. SUPPLEMENTAL ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Should Mr. West have to pay appellate costs if he does not substantially prevail on appeal and the state requests costs?

C. SUPPLEMENTAL STATEMENT OF THE CASE

Supplemental facts are in the Argument section.

D. SUPPLEMENTAL ARGUMENT

If the state substantially prevails on appeal, any request for appellate costs should be denied.

If Mr. West does not substantially prevail on appeal, he requests that no costs of appeal be authorized under Title 14 of the Rules of Appellate Procedure. The Court of Appeals has discretion to deny a cost bill even where the state is the substantially prevailing party on appeal. *State v. Sinclair*, 192 Wn. App. 380, 391, 367 P.3d 612, review denied, 185 Wn.2d 1034 (2016); RCW 10.73.160(1) (the “court of appeals . . . may require an adult . . . to pay appellate costs.”). Imposing costs against indigent defendants raises problems well documented in *Blazina*: “increased difficulty in reentering society, the doubtful recoupment of

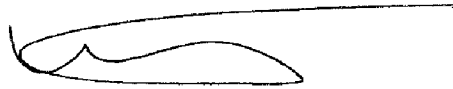
money by the government, and inequities in administration.” *State v. Blazina*, 182 Wn.2d 827, 835, 344 P.3d 680 (2015). *Sinclair* recognized the concerns expressed in *Blazina* applied to appellate costs and it is appropriate for appellate courts to be mindful of them in exercising discretion. *Sinclair*, 192 Wn. App. at 391.

The trial court found Mr. West qualified for indigent defense at trial and on appeal. CP 18-19; Supplemental Designation of Clerk’s Papers, Motion and Declaration for Order Authorizing the Defendant to Seek Review at Public Expense and Providing for Appointment of Attorney on Appeal (appeal), Order of Indigency Authorizing the Defendant to Seek Review at Public Expense and Providing for Appointment of Attorney on Appeal (appeal). Importantly, there is a presumption of continued indigency throughout the review process. *Sinclair*, 192 Wn. App. at 393; RAP 15.2(f). As in *Sinclair*, there is no trial court order finding Mr. West financial condition has improved or is likely to improve. *Sinclair*, 192 Wn. App. at 393. Given the serious concerns recognized in *Blazina* and *Sinclair*, this court should soundly exercise its discretion by denying the state’s request for appellate costs in this appeal involving an indigent appellant.

E. CONCLUSION

This court should impose no appellate costs on Mr. West if the state substantially prevails on appeal.

Respectfully submitted November 15, 2016.

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LISA E. TABBUT/WSBA 21344
Attorney for Brian West

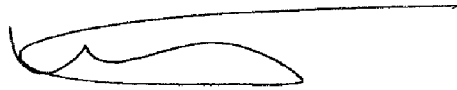
CERTIFICATE OF SERVICE

Lisa E. Tabbut declares as follows:

On today's date, I filed the Supplemental Brief of Appellant to (1) Grays Harbor County Prosecutor's Office at appeals@co.grays-harbor.wa.us.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed November 15, 2016, in Winthrop, Washington.

A handwritten signature in black ink, appearing to be 'Lisa E. Tabbut', with a long horizontal stroke extending to the right.

Lisa E. Tabbut, WSBA No. 21344
Attorney for Brian West, Appellant

LISA E TABBUT LAW OFFICE

November 15, 2016 - 12:21 PM

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